

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FRANCISCO ROMERO,

Petitioner,

v.

WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,

Respondent.

CASE NO. 2:16-CV-00600
JUDGE JAMES L. GRAHAM
Magistrate Judge Kimberly A. Jolson

OPINION AND ORDER

On January 23, 2017, the Magistrate Judge issued an *Order and Report and Recommendation* denying Petitioner's motion to strike the *Motion to Dismiss* (ECF No. 9), and recommending that Respondent's *Motion to Dismiss* (ECF No. 8) be granted and that this action be dismissed. (ECF No. 17.) Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (ECF No. 20.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection* (ECF No. 20) is **OVERRULED**. The *Order and Report and Recommendation* (ECF No. 17) is **ADOPTED** and **AFFIRMED**. Petitioner's motion to strike the *Motion to Dismiss* (ECF No. 9) is **DENIED**. Respondent's *Motion to Dismiss* (ECF No. 8) is **GRANTED** and this action is hereby **DISMISSED**.

Petitioner challenges his convictions after a jury trial in the Franklin County Court of Common Pleas on two counts of gross sexual imposition. He asserts that the evidence is constitutionally insufficient to sustain his convictions and that his convictions are against the manifest weight of the evidence; and that he was improperly convicted based on inadmissible

hearsay, victim-impact testimony, and cumulative error. The Magistrate Judge recommended dismissal of Petitioner's claims as procedurally defaulted and without merit.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of this action. Petitioner again raises all of the arguments he previously presented. He claims that the trial judge was biased and prejudiced against him, and that the proceeding against him were fundamentally unfair. Petitioner further contends that the Ohio Supreme Court in *State v. Williams*, -- Ohio St.3d --, 2016 WL 6646162 (Ohio Nov. 10, 2016), substantially limited application of Ohio's doctrine of *res judicata*, such that his procedural default of his claims does not preclude federal habeas corpus review.

Petitioner's arguments are not persuasive. The Ohio Supreme Court in *Williams* held that, where the trial court improperly imposes separate sentences for allied offenses of similar import, such sentences are void, and *res judicata* does not preclude a court from correcting such sentences after direct appeal. *Id.* at *1. Such are not the circumstances here. Petitioner waived his claims of insufficiency of the evidence and his claim that his sentences are against the manifest weight of the evidence by failing to establish cause and prejudice for his failure to raise such claims on direct appeal. Further, as noted by the Magistrate Judge, a claim that a conviction is against the manifest weight of the evidence is not cognizable on federal habeas review. *See Williams v. Jenkins*, No. 1:15-cv-00567, 2016 WL 2583803, at *7 (N.D. Ohio Feb. 22, 2016)(citing *Nash v. Eberlin*, 258 Fed.Appx. 761, 765 n. 4 (6th Cir. 2007)). Further, the record fails to reflect that the state court's evidentiary rulings constitute a basis for federal habeas corpus relief. To the extent that Petitioner now claims prejudice or bias on the part of the state trial court, Petitioner failed either to present such claim in his initial *Petition*, or to present such claim to the state courts. This Court therefore will not now address such issue here.

For the foregoing reasons and for the reasons detailed in the Magistrate Judge's *Order and Report and Recommendation*, Petitioner's *Objection* (ECF No. 20) is **OVERRULED**. The *Order and Report and Recommendation* (ECF No. 17) is **ADOPTED** and **AFFIRMED**. Petitioner's motion to strike the *Motion to Dismiss* (ECF No. 9) is **DENIED**. Respondent's *Motion to Dismiss* (ECF No. 8) is **GRANTED** and this action is hereby **DISMISSED**.

IT IS SO ORDERED.

Date: March 9, 2017

s/James L. Graham
JAMES L. GRAHAM
United States District Judge